



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Development Management Systems, Inc.--
Reconsideration
File: B-227823.2; B-227824.2; B-227825.2; B-227826.2
Date: July 24, 1987

DIGEST

1. Dismissal of protests is affirmed where protester concedes it failed to provide copy of protests to contracting agency within 1 day after the protests were filed with the General Accounting Office. Failure to provide copy will not be waived simply because of additional effort necessary to meet 1-day requirement when protests involve contracting activity located overseas.
2. Where solicitation does not specify contracting agency official to whom copy of protest is to be sent, providing copy to contracting agency official unconnected with procurement being protested does not meet requirement for service of protest on contracting agency since General Accounting Office Bid Protest Regulations require service on contracting officer if no other official is designated.

DECISION

Development Management Systems, Inc. (DMS) requests reconsideration of our dismissal of its protests concerning solicitation Nos. LI-002, LI-003, LI-004, and LI-005, issued by the State Department for custodial and maintenance services at the United States Embassy, Monrovia, Liberia. We dismissed the protests because DMS failed to furnish a copy^{1/} to the contracting agency within 1 day after the protests were filed with our Office. We affirm the dismissals.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1986), require that the protester furnish a copy of the protest to the contracting agency within 1 working day after the protest is filed. Here, DMS' protests, filed with our Office on June 5, did not indicate that a copy had been

^{1/} All four protests were contained in a single submission.

furnished to the contracting agency, and the State Department subsequently advised us that a copy of the protests was not received until on or about June 12. The copy was sent to the Chief of the Procurement Division, who, according to the State Department, is the head of its Washington, D.C. contracting office but has no jurisdiction over contracting at diplomatic posts abroad. Because DMS failed to meet the 1-day notice requirement in 4 C.F.R. § 21.1(d), we dismissed the protests.

The 1-day notice requirement stems from the requirement in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(b)(2)(A) (Supp. III 1985), that the contracting agency file a written report with our Office within 25 working days after we notify the agency of the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hampers the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to consider all objections to agency procurement actions in as timely a fashion as possible. Refac Electronics Corp.--Reconsideration, B-226034.2, Feb. 4, 1987, 87-1 CPD ¶ 117. DMS argues, however, that its protests should not have been dismissed for failure to satisfy the 1-day notice requirement, however, because the location of the contracting activity in Liberia made 1-day delivery impossible; as DMS states, the State Department itself recognized that commercial messenger service to Liberia takes 4-5 days.

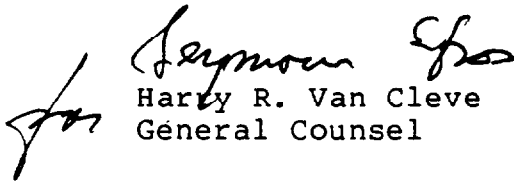
While the location of the contracting activity may require an additional effort on the protester's part to meet the 1-day notice requirement, we believe that it is the protester's responsibility to take potential mailing difficulties into account when filing a protest involving an overseas procurement. We see no basis to routinely waive the 1-day notice requirement in all such cases, since the purpose of the requirement--to ensure timely consideration of protests within the statutory deadlines--outweighs any burden to the protester. Although in appropriate cases we do not strictly enforce the 1-day requirement, see, e.g., Hewitt, Inc., B-219001, Aug. 20, 1985, 85-2 CPD ¶ 200, here DMS concedes that it did not mail the copy of the protests until Monday, June 8, the third calendar day after the protest was filed on Friday, June 5, and does not dispute the State Department's assertion that the copy of the protest was not received until June 12, 1 week after the protest was filed.

In addition, DMS did not send the copy to the appropriate contracting agency official. See Ledoux & Co.--Request for Reconsideration, B-222890.2, May 28, 1986, 86-1 CPD ¶ 499. While DMS argues that it tried without success to ascertain the agency official to whom the protest should be sent, and

lacking such information, chose to send it to the head of the State Department's contracting office in Washington, D.C., our Bid Protest Regulations, 4 C.F.R. § 21.2(d), make clear that where, as in this case, the solicitation does not designate a particular individual to receive the copy of the protest, the copy is to be sent to the contracting officer, whose mailing address was provided in the solicitations at issue here.

Finally, according to the protester the solicitations it challenges were issued for the purpose of conducting a cost comparison under Office of Management and Budget (OMB) Circular A-76 between contracting out for the services and performing them in-house. DMS argues that its failure to timely serve a copy of the protests on the appropriate contracting agency official was due to the State Department's lack of the procedures called for by Federal Acquisition Regulation (FAR), 48 C.F.R. § 7.307 (1986), for informal administrative review of cost comparisons under OMB Circular A-76. The FAR provision DMS cites does not relate to the procedural requirements for consideration of bid protests by our Office, which, as discussed above, are established by our own Bid Protest Regulations, 4 C.F.R. part 21.

The prior dismissals are affirmed.


Harry R. Van Cleve
General Counsel